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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,522	03/01/2002	Ulrich Haueter	14347	4086
25763 7590 03/26/2007 DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT SUITE 1500 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402-1498			EXAMINER NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3735	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/26/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/087,522	Applicant(s) HAUETER ET AL.	
	Examiner Robert L. Nasser	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 30, and 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Throughout claims 30 and 38, applicant positively recites the body. For example, the claims recite that the supply tube and the discharge tube connect subcutaneously, that the discharge tube is substantially perpendicular to the skin surface, that the support plate is substantially parallel to the skin surface, here the lower surface is positioned against the a skin surface and the upper surface faces away from the skin surface. All of these recite positive relationships to the human body. However, the human body is non-statutory and cannot be positively recited. Applicant should amend the claims to recite, for example, that the plate is adapted to be positioned parallel to the skin surface.

Before applying art, the examiner recognizes that four references are being combined. However, it is the examiner's position that the changes to Korf are minor in nature and do not change the operating principles of Korf.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korf et al 6013029 in view of Patsalos et al 5607390, Bergveld et al 6463312 and Pfeiffer 5640954.

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Korf in figure 2 shows a dialysis probe including an inlet portion 15 receiving dialysis fluid, a supply portion 13 coupled to the inlet portion for conducting dialysis fluid through the skin, a discharge tube 14 for conducting dialysis fluid out of the body, where the discharge fluid can be positioned perpendicular to the skin surface, 15, an outlet portion 27 coupled to the discharge tube at a joint portion 3 and 7, which joins the element 16 to element 27. The joint portion includes a sensor 3. It does not have the supporting plate. However, Patsalos et al teaches that in dialysis probes, it is desirable to have the access portion attached to a support plate 7, in order to prevent the needle from breaking loose inside the body (see column 1, lines 28-38). Hence it would have been obvious to modify Korf to use such a plate, to increase patient safety. In addition, Korf does not describe the structure of the tubes 13 and 14, the combination does not have the supply and discharge tubes connected and they are not membranes. However, Bergveld et al teaches an alternate access device which is a U-shaped membrane for the same purpose as the interface of Korf. Hence, it would have been obvious to use the access structure of Bergveld, as it is merely the selection of an element that is well known for the purposes of Korf. In addition, the combination does not have the valve. Pfeiffer shows the same type of device as Korf et al, where there is a check valve 90 for preventing flow of fluid from the sensor back to the needle. Since the valve is before the sensor, it would be in the discharge tube. Hence, it would have been obvious to modify Korf et al to include such a valve, so as to control the fluid flow and maintain accurate readings. With respect to claim 31, the sensor is removable in that it can be taken out of the device.

Applicant's arguments filed 12/26/2006 have been fully considered but they are not found to be persuasive.

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Applicant has asserted that "the body fluid detector of Korf includes a detector 3 that is located adjacent to selector 7 in the downstream body 19, where the conduit running through the downstream body is straight. Therefore, Korf also does not disclose or suggest that the sensor is located at a "joint portion between the discharge tube and the outlet portion." The examiner notes that the sensor 3 is in a portion that joins the discharge tube to the outlet portion. Hence, it is a joint portion.

Applicant has further asserted that the references provide no motivation to modify Korf to use the support plate. The examiner disagrees, noting that Patsalos et al teaches that in dialysis probes, it is desirable to have the access portion attached to a support plate 7, in order to prevent the needle from breaking loose inside the body (see column 1, lines 28-38). This provides clear motivation for the modification.

Applicant has further asserted that the references do not provide motivation to modify Korf to use the membrane of Bergveld for the supply and discharge tubes. The examiner disagrees, noting that the tubes of Bergveld and Korf are equivalents for the purpose and hence are substitutable for one another. See MPEP 2144.06

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert L. Nasser
Primary Examiner
Art Unit 3735

RLN
March 6, 300


ROBERT L. NASSER
Primary Examiner